

AMENDED IN SENATE APRIL 9, 2007

AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 362

Introduced by Senator Simitian

February 20, 2007

An act to add Section 52.7 to the Civil Code, relating to identification devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 362, as amended, Simitian. Identification devices: subcutaneous implanting.

Existing law accords every person the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his or her personal relations, subject to the qualifications and restrictions provided by law.

This bill would prohibit a person from requiring, coercing, or compelling any other individual to undergo the subcutaneous implanting of an identification device, as defined. The bill would authorize the Attorney General, a district attorney, a city attorney, or an aggrieved party to bring an action against a violator for injunctive relief or for the assessment of civil penalties, as specified, to be determined by the court, *subject to a 3-year statute of limitation*. The bill would *also authorize the court to* grant a prevailing plaintiff reasonable attorney's fees and costs.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 52.7 is added to the Civil Code, to read:

52.7. (a) A person shall not require, coerce, or compel any other individual to undergo the subcutaneous implanting of an identification device.

(b) (1) Any person who violates or threatens to violate subdivision (a) may be enjoined in any court of competent jurisdiction.

(2) Any person who violates subdivision (a) ~~shall~~ *may* be assessed an initial civil penalty of no more than ten thousand dollars (\$10,000), and no more than one thousand dollars (\$1,000) for each day the violation continues until the deficiency is corrected. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction. The court ~~shall~~ *may* also grant a prevailing plaintiff reasonable attorney's fees and costs.

(3) In assessing the amount of the civil penalty for a violation of subdivision (a), the court ~~shall~~ *may* consider all of the following:

(A) The nature and extent of the violation.

(B) The number and severity of the violations.

(C) The economic effect of the penalty on the violator.

(D) Whether the violator took good faith measures to comply with this section and the time those measures took.

(E) The willfulness of the violator's misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(4) Actions pursuant to this section may be brought by any aggrieved party or by the Attorney General, a district attorney, or a city attorney.

(5) *An action brought pursuant to this section shall be commenced within three years of the date upon which the identification device was implanted, unless the person who received the implant lacked capacity at the time of implantation, in which case, within three years after the date of discovery.*

(c) *The provisions of this section shall be liberally construed so as to protect privacy and bodily integrity.*

1 (d) *Actions brought pursuant to this section are independent of*
2 *any other actions, remedies, or procedures that may be available*
3 *to an aggrieved party pursuant to any other law.*

4 ~~(e)~~

5 (e) For purposes of this section:

6 (1) “Identification device” means any item, application, or
7 product that is passively or actively capable of transmitting
8 ~~personally identifiable~~ *personal* information, including, but not
9 limited to, devices using radio frequency technology.

10 (2) “Person” means an individual, business association,
11 partnership, limited partnership, corporation, limited liability
12 company, trust, estate, cooperative association, or other entity.

13 (3) ~~“Personally identifiable”~~ “*Personal* information” includes
14 any of the following data elements to the extent they are used alone
15 or in conjunction with any other information used to identify an
16 individual:

17 (A) First or last name.

18 (B) Address.

19 (C) Telephone number.

20 (D) E-mail, Internet Protocol, or Web site address.

21 (E) Date of birth.

22 (F) Driver’s license number or California identification card
23 number.

24 (G) Any unique personal identifier number contained or encoded
25 on a driver’s license or identification card issued pursuant to
26 Section 13000 of the Vehicle Code.

27 (H) Bank, credit card, or other financial institution account
28 number.

29 (I) Any unique personal identifier contained or encoded on a
30 health insurance, health benefit, or benefit card or record issued
31 in conjunction with any government-supported aid program.

32 (J) Religion.

33 (K) Ethnicity or nationality.

34 (L) Photograph.

35 (M) Fingerprint or other biometric identifier.

36 (N) Social security number.

37 (O) Any unique personal ~~or organization-specific~~ identifier.

- 1 (4) “Subcutaneous” means existing, performed, or introduced
- 2 under or on the skin.

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